

The Honorable Thomas Zilly

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KYLLE AND SHAWNETTE BERNETHY, individually
and on behalf of their marital community,

Plaintiffs,

v.

LAKECOURT APARTMENTS, LLC, a Washington
limited liability company; FANEUIL HALL
APARTMENTS, LLC, a Washington limited liability
company; and MIKE and TONYA HEATHMAN, a
marital community,

Defendants.

LAKECOURT APARTMENTS, LLC, a Washington
limited liability company; FANEUIL HALL
APARTMENTS, LLC, a Washington limited liability
company; and MIKE and TONYA HEATHMAN, a
marital community,

Counterclaimants,

v.

KYLLE AND SHAWNETTE BERNETHY, individually
and on behalf of their marital community,

Counter Defendants.

NO. 2:18-CV-01014-TSZ

MOTION FOR LEAVE TO
WITHDRAW

**HEARING DATE:
AUGUST 16, 2019
(WITHOUT ORAL ARGUMENT)**

INTRODUCTION

Pursuant to Local Rule (LR) 83.2 and Rules of Professional Conduct (RPCs) 1.16, 3.3, and 1.2(d), counsel for Plaintiffs brings this Motion for Leave to Withdraw from representation of Plaintiffs.

STATEMENT OF FACTS

Depositions were taken in this case the week prior to the discovery cutoff date, which was Monday, July 22, 2019. On that same date, Defendants submitted their Answers and Responses to Plaintiffs' Interrogatories and Requests for Production. After attending the depositions and reviewing the discovery answers and responses, counsel for Plaintiffs concluded that certain issues governed by the RPCs had arisen and that she was obligated to act as a result. She independently researched the ethical issues presented and then contacted the Washington State Bar Association's ("WSBA's") ethics hotline on July 25, 2019, where she left a message seeking a return phone call. On July 26th, Defendants filed their Motion for Summary Judgment, which is scheduled to be heard on August 16, 2019. Counsel for Plaintiffs was unable to connect with the WSBA for a substantive discussion of the ethical issues involved until Monday, July 29, 2019. *See Declaration of Kristi Favard ("Favard Decl.")*.

Between counsel's own research and the phone conversation she had with the WSBA, she determined that she is mandatorily obligated to file a Motion for Leave to Withdraw under Rules of Professional Conduct 1.16 and 3.3 because facts and professional considerations exist that require her to seek withdrawal from the case. Due to confidentiality obligations mandated by RPC 1.6, counsel for Plaintiffs is unable to provide further details unless ordered by the Court. *Favard Decl.*

Plaintiffs have been informed of counsel's intent to withdraw and have been sent copies of all applicable pleadings via both regular and certified mail, return receipt requested. Plaintiffs will not be represented and will need to retain new counsel or represent themselves in this matter going forward should the Motion for Leave to Withdraw be granted. *Id.*

ISSUE PRESENTED

Should the Court grant Plaintiffs' counsel leave to withdraw from representing Plaintiffs pursuant to RPCs 1.16 and 3.3?

EVIDENCE RELIED UPON

The Declaration of Kristi Favard and exhibits attached thereto and the records and pleadings on file with the Court.

LEGAL ARGUMENT

Local Court Rule of Civil Procedure 83.2 requires leave of the Court for withdrawal of representation. Pursuant to RPC 1.16, professional considerations require counsel for Plaintiffs to seek leave for withdrawal of representation. Further information cannot be revealed due to confidentiality. *RPC 1.6*. Plaintiffs will not be represented and will need to retain new counsel or represent themselves in this matter going forward should this Motion for Leave to Withdraw be granted. *WSBA Advisory Opinion 201701* supports this Motion. *See Favard Decl., Ex. A*. Plaintiffs will not be prejudiced by counsel's withdrawal because, as they have testified, several law firms are willing to represent them. *See Favard Decl., Ex. B, Kylle Bernethy Deposition, p. __, ll. ____*. In addition, no trial continuances have been given in this matter to date and Plaintiffs may be able to seek a continuance of the trial date if necessary. Therefore, counsel's Motion for Leave to Withdraw should be granted.

CONCLUSION

The Court should grant the Motion for Leave to Withdraw.

Dated this 30th day of July 2019 in Everett, Washington.

HKM EMPLOYMENT ATTORNEYS LLP

/s/ Kristi Favard

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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on the date below, I caused the foregoing document to be filed using CM/ECF, which will transmit the same to all counsel of record. I have also mailed a copy via Regular U.S. Mail and a copy via Certified Mail Return Receipt Requested to the Plaintiffs at the following address:

{insert Bernethys new address and phone number here}

DATED: July 30, 2019

By /s/ Kristi Favard
Kristi Favard, WSBA No. 34419